Petition

81-1513

Office - Supreme Court, U.S.
FILED
FEB 8 1982
ALEXANDER L. STEVAS,
CLERK

NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM 1982,

STATE OF ALABAMA ,

PETITIONER

VS.

EARL A. BRYARS, JR.,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT AND COURT OF CRIMINAL APPEALS OF ALABAMA

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COUNSEL FOR PETITIONER

QUESTION PRESENTED

DOES THE DECISION OF THIS HONORABLE COURT IN BECK V. ALABAMA (447 U. S. 625 [1980]) REQUIRE THE AUTOMATIC RETRIAL OF ALL CASES TRIED UNDER THE ALABAMA CAPITAL PUNISHMENT STATUTE PRIOR THERETO WITHOUT REGARD TO THE EVIDENCE?

PARTIES

In the Circuit Court of Escambia County, Alabama, the Court of Criminal Appeals of Alabama and the Supreme Court of Alabama, the parties were: The State of Alabama, Petitioner herein and Earl A. Bryars,Jr., Respondent herein.

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OPINIONS BELOW

The opinions or order of the Court of Criminal Appeals of Alabama is not as yet reported but will be reported as:

Bryars v. State, (Cr. App. Ala., 1981) _____ So. 2d_____.

The same is submitted herewith as Appendix "A", hereto.

The opinions and orders of the Supreme Court of Alabama are not as yet reported but will be reported as:

Ex Parte : State, In Re: Bryars v. State (S. Ct. Ala. 1981) _____ So. 2d _____.

The same are submitted herewith as Appendix "B".

JURISDICTION

The order of the Supreme Court of Alabama denying certiorari was issued December 11, 1981, and this petition is filed within sixty (60) days of said date:

The jurisdiction of this Honorable Court is invoked under 28 United States Code, Section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

Section one of the Fourteenth Amendment to the Constitution of the United States which reads as follows:

> "...All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which sahll abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction of equal protection of the law ..."

STATUTORY PROVISIONS INVOLVED

Code of Alabama, 1975, Title 13, Sections 13-11-1 through 13-11-9.

STATEMENT OF THE CASE

Respondent was indicted by Spring Session, 1980, Grand Jury of Escambia County, Alabama, for the offense of murdering two people by one or a series of acts in violation of Code of Alabama, 1975, §13A-5-31(a)(10). Trial resulted in a conviction for the charged offense.

Pursuant of a sentencing hearing, the sentencing authority imposed a sentence of death.

On August 4, 1981, prior to the filing of briefs, the Alabama Court of Criminal Appeals reversed the case an remanded it for a new trial. Applica-

tion for Rehearing was over ruled, without opinion, on October 6, 1981. On December 11, 1981, the Alabama Supreme Court denied Petitioner's Petition for Writ of Certiorari.

STATEMENT OF THE FACTS

The evidence presented in this cause indicated without dispute that on November 21, 1979, Lemmie Coleman and Dave Hudson were killed by one or more shotgun blasts (R.376-379) at approximately 5:00 p.m. in Escambia County, Alabama. The evidence indicated that at approximately that time and date the Respondent Earl Bryars' truck had been seen at the place where the killings occurred. Also at that time witnesses heard four shotgun blasts (R.508) and shortly thereafter the Respondent's vehicle was seen leaving the scene of the crime. This vehicle proceeded past the witnesses and Bryars was identified as the driver (R.510).

The Sheriff of Escambia County testified that he obtained from the Respondent his shotgun by consent which was given to him by the Respondent after he had taken it from his vehicle (R.342). This weapon was test fired by a ballistics expert who identified it as the one used to fire four shotgun shells, the casings of which were recovered from the scene. (R. 403).

There was further evidence which indicated that the deceased Mr. Coleman and the Respondent had had some heated arguments over certain land deals (R.570) and that tempers had flared between the two (R.618). There was also evidence that the Respondent's wife had purchased his shotgun for him just prior to the death of the two victims.

The evidence proved that the deceased, Mr. Hudson, was an employee of Coleman who apparently just happened to be working there

with him when the shooting started.

It is obvious from the transcript that the entire strategy of the defense was centered around the contention that Bryars was not the man who did the killing. That the State's case was circumstantial and weak and did not sufficiently link the Respondent to the crime. This is evidenced not only by the alibi testimony of Bryars(R.697) and his wife (R.666) but is also indicated by the evidence of Respondent as to the weather conditions and time of day which were related to the adequacy of visibility in identifying the Respondent (R641,688). This was also brough out in many of the State's witnesses on cross examination (R.238,259). The Respondent also stressed other points to indicate his lack of involvement including his failure to run when accused (R.331), that he cooperated

freely (R.349), that there was no evidence that he bought slugs (R.309), no prints found (R.417), that perhaps three thousand dollars was stolen from Hudson (R. 489).

All of this tends to indicate that the Respondent's sole defense was that of alibi, that he did not commit the act in question.

ARGUMENT

THIS COURT'S DECISION IN BECK DOES NOT MANDANTE THE REVERSAL OF EVERY CASE TRIED UNDER THE ALABAMA DEATH PENALTY STATUTE PRIOR THERETO

REASON FOR GRANTING THE WRIT: CONFLICT WITH BECK V. ALABAMA (447 U. S. 625 [1980])

In Beck v. Alabama (447 U.S. 625,65 L. Ed. 2d 392, 100 S. Ct. 2382 [1980]) this Honorable Court considered the conviction and death sentence of a criminal defendant convicted and sentenced under a statute forbidding the consideration of lesser included offenses. In Beck it was clear and conceded that the evidence would have supported a finding of lesser included offenses. In summarizing the issue before it and its decision, this Honorable Court wrote:

> "...We granted certiorari to decide the following question:
>
> "'May a sentence of death constitu-

> tionally be imposed after a jury verdict of guilty of a capital offense, when the jury was not permitted to consider a verdict of guilt of a lesser included non-capital offense, and when the evidence would have supported such a verict?' 444 U.S. 897, 62 L. Ed. 2d 132, 100 S. Ct. 204
>
> "We now hold that the death penalty may not be imposed under these circumstances..." (447 U.S. 625, 627, 65 L. Ed. 2d 392,396).

Thus , Beck was carefully limited to its facts. In fact, this Honorable Court expressly declined to extend the Beck rule to non-capital cases. See Note 14, 447 U. S. 625, 638, 65 L. Ed. 2d 392, 403.

A review of how the Alabama Courts have applied the Beck rule to cases in which there is no evidence of lesser included offenses follows.

In Ritter v. State ([S. Ct. Ala., 1981] 403 So. 2d 154) the Alabama Supreme Court reversed, on authority of Beck v. Alabama,[1] supra, the conviction

of a criminal defendant who had pleaded guilty to the capital offense, frankly admitted his guilt and demanded the death penalty. In denying rehearing in Ritter, the Court wrote:

> "...We believe this result is compelled by the decision of the Supreme Court of the United States in Beck and is consistent with the interpretation of that decision reached by the Court of Appeals for the Fifth Circuit in Evans v. Britton, 639 F. 2d 221 [March 19, 1981] (1981)[2], which

---

1 "...SHORES, JUSTICE.

" Reversed and remanded to the Court of Criminal Appeals with directions to that Court to grant a new trial under the authority of Beck v. Alabama, 447 U.S. 625, 100 S.Ct. 2382, 65L. Ed. 2d 392 (1980), and Beck v. State [MS. Dec.19, 1980], 396 So. 2d 645 (Ala. 1980).

"REVERSED AND REMANDED."

2 Pending in this Honorable Court on writ of certiorari sub.nom. Hopper v. Evans,80-1714,Certiorari granted June 22, 1981, sub nom. Britton v. Evans 49 U. S. L. Wk. 3954.

involved Ritter's partner in this crime..." (emphasis supplied).

Ritter established a pattern for all the pre-Beck cases. Retrial was deemed required by this Honorable Court's decision and opinion in Beck. See, for example, Bracewell v. State (S. Ct. Ala., 1981) 401 So. 2d 130. [3] The orders in

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[3] Initially the writ was denied on June 19, 1981, with a brief memorandum by Justice Maddox, which read:

"Petition for Writ of Certiorari is denied."

"By Denying the writ of certiorari in this case , we assume that the Court of Criminal Appeals after reviewing the record in this case, has determined that there wassome evidence presented which would have entitled the accused to an instruction on a lesser included offense.

"Writ denied." (unreported manuscript opinion) (Emphasis supplied.)

However, six (6) days later Justice Maddox's opinion was withdrawn on the Court's own motion, and the following was issued:

"The opinion dated June 19, 1981, is withdrawn and the following, together with Justice Maddox's special concurring opinion, is substituted in its place.

"WRIT DENIED." (Bracewell v. State [S Ct. Ala., 1981[401 So. 2d 130)

these cases result solely from the Alabama Supreme Court's understanding of Beck v. Alabama (supra). If there was ever any doubt about this, it was dispelled when this Honorable Court vacated and remanded the Ritter case for reconsideration of an alternative basis for these orders. Alabama v. Ritter 50 U.S.L. Wk. 3277 (Oct. 13, 1981) . On Dec. 11, 1981, the Alabama Supreme Court wrote:

> "The United States Supreme Court has remanded this case to this Court for further consideration in light of Reed v. State, Ala., [MS. June 12, 1981] ____So. 2d ____ (1981) extended on rehearing Aug. 28, 1981, motion for clarification denied (Oct. 7, 1981).
>
> " On June 12, 1981, this Court extended its initial opinion in the present case to explain that our reversal and remand was compelled by the decision of the United States Supreme Court in Beck v. Alabama, [447] U.S. [625], 100 S. Ct. 2382, 65 L. Ed. 2d 392 (1980), and was "consistent with the interpretation of that decision" reached by the Fifth Circuit in Evans v. Britton, [639] F. 2d [221] [March 19, 1981] (1981). We adopt our previous opinion and now unequivocally hold that our pre-

> vious opinion in this case was based upon federal constitutional grounds. Moreover, our opinion in Reed v. State, supra, rather than altering our previous decision in this case explained further why we felt compelled by federal constitutional considerations to reverse the conviction in the case." (Ritter v. State [S. Ct. Ala., Dec. 11, 1981] ____ So. 2d _____) (Emphasis supplied).

The question here is not whether or not retrying all these cases is a good idea but whether this Honorable Court's decision in Beck mandates retrial in every case without regard to the evidence. The Alabama statute before the severence of the Preclusion Clause required that juries choose between guilt of the capital offense or absolute acquittal, even when the evidence suggested a middle verdict. However, had the Preclusion Clause never existed, this case would still have presented the Respondent's jury with the same choice. The evidence provided no basis for lesser included offenses.

Thus, the possibility of a verdict of guilty of a lesser included offense was precluded by the evidence and the constitutional prohibition against arbitrary and capricious verdicts. In other words, the Preclusion Clause had no impact whatever on this case.

Nothing in this Honorable Court's Opinion in Beck suggests a mandate for rubber stamp reversals of cases which could not have been affected in any way by the Preclusion Clause. In holding that it did, the Court of Criminal Appeals and Supreme Court of Alabama's decisions and opinions in this case are in conflict with Beck v. Alabama, supra.

A literal interpretation of Beck's "in every case" language is not required as the passage in question itself reveals. In that passage, this Court explained that the presence of lesser offense verdict options "may encourage the jury to convice for an impermissible reason" when

the jury has a "belief that the defendant is guilty of some serious [lesser included] crime and should be punished." Beck v. Alabama, 447 U. S. at 642. The only time the jury could rationally reach a "belief that the defendant is quilty of some serious [lesser included] crime," is when there is some rational basis in the evidence for such a belief. Therefore, the only cases in which preclusion of lesser offense verdict options could encourage capital offense convictions based on impermissible reasons are cases in which there is at least some evidentiary basis for a verdict convicting the defendant of a lesser offense instead of the capital offense.

The phrase "in every case" must also be limited insofar as it refers to the second "extraneous factor" set out in the paragraph

of the Beck opinion in question, which is that: "the apparently mandatory nature of the death penalty may encourage it to acquit for an equally impermissible reason - that, whatever his crime, the defendant does not deserve death." 447 U.S. at 642-643 (footnote omitted). This Court cannot have meant that there was a constitutionally intolerable risk of acquittal in Alabama capital cases tried before the Beck decision, because this Court pointed out that there had been a 96% conviction rate in pre-Beck capital cases. 447 U. S. at 641 & n. 18. Surely, a 4% acquital rate is not intolerably high.

What this Court did mean in the paragraph in question is evident from the particular argument that it was written to answer. Alabama had argued that any effect the pre-

slusion clause might have in influencing a jury to wrongfully convict a defendant of a capital offense when the evidence showed that the defendant was guilty of a serious lesser offense would be offset by the effect of the seeminly mandatory verdict form requirements. The argument was that when there was an evidentiary basis for a lesser offense, the preclusion clause's push toward improper convictions would be offset by the verdict form's pull toward improper acquittals. Beck v. Alabama, 447 U. S. at 638-641. This Court rejected that argument. id., at 639-643, but the important point here is that the language of the Beck opinion referring to an intolerable risk of erroneous factfinding "in every case" was intended to answer it. Because Alabama had argued that in every

case like Beck in which there was an evidentiary basis for a lesser included offense there would be an offsetting of pressures on the jury, this Court in rejecting that argument answered that in every such case "in every case" like Beck's there would be uncertain and unreliable factfinding. But in cases like the present one where there was no evidentiary basis for a lesser included offense, there was no pressure on the jury to erroneously convict the defendant of the capital offense in order to prevent his release, because there was no reason for the jury to believe that he was guilty of a serious lesser offense and should not be acquitted for that reason.

In Ritter v. State, supra, three justices of the Alabama Supreme

Court concluded that the Beck decision did not mandate the reversal of a pre-Beck conviction in the unusual case where the record affirmatively and undisputably eliminates any possibility that the defendant was harmed by the existance of the preclusion clause.[4] That is the

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[4] Those three justices of the Alabama Supreme Court were outvoted by a 6 member majority which concluded, "consisten[ly] with the interpretation of that decision reached by the 5th Circuit," that the Beck decision " compelled" the reversal of all pre-Beck capital convictions regardless of the facts. Ritter v. State, supra, slip op. at 2 (majority opinion), pp. 1a-2a, infra, id., at 3 (Torbert, concurring specially), p. 2a infra.

The fact that a majority of the Alabama Supreme Court, influenced by the 2 member majority in the court below, joined that court in misinterpreting the Beck decision simply proves that this Court needs to correct both courts. This court has the opportunity to correct the Alabama Supreme Court's misinterpretation of Beck in Alabama v. Ritter, No. 81-247 (certiorari filed Aug.6, 1981).

correct interpretation of the Beck decision.

We must add at this point what has already been incicated previously. That is, that this Respondent was in no way harmed by the existence of the preclusion clause. With this in mind we must submit that lacking such harm or prejudice the Alabama Court's decision below in Beck, supra, which was based on a fundamental Due Process Clause claim, can not stand.

There was no evidence of harm to the Respondent in this regard nor is there any evidence that the preclusion clause affected his defense. Thus, a finding below that there was a violation of fundamental fairness through due process can not stand. One simply should not be allowed to claim a denial of fundamental fairness. absent some harm or prejudice. This is another reason why the Alabama

Court's reliance on Beck, supra under these circumstances is improper.

IN THE ALTERNATIVE, THIS PETITION SHOULD NOT BE DECIDED UNTIL THIS COURT DECIDES THE EVANS CASE

As previously addressed herein this case presents one very important question concerning the Alabama Courts' interpretation and application of the Beck v.Alabama, 447 U.S. 625 (1980) decision. This same question has been previously raised in numerous other related cases, eg., Hopper v. Evans, No. 80-1714 (certiorari granted June 22, 1981 and presently pending in this Court) and Ritter v. Alabama, (certiorari petition now pending). The question is also presented in separate petitions filed contemporaneously herewith, see: Alabama v. Bracewell; Alabama v. Hill. The importance of this issue can not be understated.

Because of this importance and its effect on other Alabama cases, it is asked that the Court grant this certiorari petition and continue with a decision on the merits. However, if this petition is not granted then this petition should be held until a decision is reached in the Hopper v. Evans, supra case.

CONCLUSION

In conclusion the Petitioner, the State of Alabama, respectfully submits that the decisions and opinions of the Court of Criminal Appeals and the Supreme Court of Alabama in this case present conflicts with the prior decisions and opinions of this Honorable Court. For this reason the Petitioner prays that this Honorable Court will issue the writ of certiorari and review the decision and opionions of the Honorable Court of Criminal Appeals and Supreme Court of Alabama and on such review will reverse the decisions of said Courts granting a new trial to the Respondent.

CHARLES A. GRADDICK
ATTORNEY GENERAL

EDWARD E. CARNES
ASSIST. ATTORNEY GENERAL

JAMES F. HAMPTON
SPE. ASS'T.ATT. GENERAL

CERTIFICATE OF SERVICE

I, James F. Hampton, a Special Ass't. Attorney General of Alabama, and a member of the Bar of the Supreme Court of the United States and one of the Attorneys for the State of Alabama, Petitioner, do hereby certify that on this _____day of _____, 1982, I did serve the requiste number of copies of the foregoing on the Attorney for the Respondent, by mailing same to him, first class postage prepaid and addressed as follows:

Hess, Atchison & Horne
P. O. Box 1706
Mobile, Ala. 36633

_____
JAMES F. HAMPTON
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ADDRESS OF COUNSEL:
Office of the Attorney General
250 Administrative Building
64 N. Union Street
Montgomery, Ala. 36130

Appendix

APPENDIX A

August 4, 1981

THE STATE OF ALABAMA-JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM 1980-81

3 Div. 304

Earl A. Bryars, Jr.

v.

State

APPEALED FROM ESCAMBIA CIRCUIT COURT

PER CURIAM

The judgement of the conviction is reversed and the cause remanded for a new trial on authority of Beck v. Alabama, 447 U.S. 625, 100 S. Ct. 2382, 65 L. Ed. 2d 392 (1980), on remand, Ala., 396 So. 2d 645 (1981), and Ritter v. State, Ala. S. C. No. 77-798 (Ms. May 8, 1981), Ala. Cr. App., 1 Div 837 (Ms. June 23, 1981), July 7, 1981, Motion for Stay of Mandate Denied by Ala. S. C.

REVERSED AND REMANDED.

All Judges Concur.

APPENDIX B

December 11, 1981

THE STATE OF ALABAMA-JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1981-82

Ex parte: State of Alabama

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS

Re: Earl A. Bryars, Jr.

v.

State of Alabama

81-71

TORBERT, CHIEF JUSTICE.

WRIT DENIED.

Almon, Shores, Embry and Beatty, JJ., concur.

Maddox, Jones and Adams, JJ., dissent.

Faulkner, J., not sitting.

81-71- Ex parte State (RE: Earl A. Bryars, Jr. v. State)

JONES, JUSTICE (Dissenting)

I would grant the petition for writ of certiorari and limit the remand to the issue of sentencing.

This case shows the extreme of what the dissent was trying to point out in Ritter v. State, 403 So. 2d 154 (Ala. 1981), In this case, where the defense is alibi, there is no possibility that the accused could have raised a lesser-included offense. He was there and did it or was somewhere else and did not do it. How can he be entitled to a new trial because he was denied a lesser-included offense charge?

Maddox and Adams, JJ., concur.

Opposition

Supreme Court, U.S.
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NO. 81-1513

IN THE SUPREME COURT FOR THE
UNITED STATES

OCTOBER TERM 1982

STATE OF ALABAMA,

PETITIONER

VS.

EARL A. BRYARS, JR.,

RESPONDENT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The Defendant was tried and convicted under §13-A-5-31(a) (10) of the Code of Alabama, 1975, of capital murder. The statute read in pertinent part:

> "If the jury finds the defendant guilty, it shall fix the punishment at death when the defendant is charged by indictment with any of the following offenses and with aggravation, which must also be averred in the indictment and which offenses so charged with said aggravation shall not include any lesser offenses: ...(10) murder in the first degree wherein two or more human beings are intentionally killed by the defendant by one or a series of acts;..."

Code of Alabama, 1975, §13-1-70 read as follows:

> "Every homicide perpetrated by poison, lying in wait or any other kind of wilful, deliberate, malicious and premeditated killing; or committed in the perpetration of, or the attempt to perpetrate, any arson, rape, robbery or burglary, or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other that him who is

killed; or perpetrated by any act greatly dangerous to the lives of others and evidencing a depraved mind regardless of human life, although without any preconceived purpose to deprive any particular person of life, is murder in the first degree; and every other homicide committed under such circumstances as would have constituted murder at common law is murder in the second degree."

Code of Alabama, 1975, §13-1-73 read as follows:

"When the jury finds the defendant guilty under an indictment for murder, they must ascertain by their verdict whether it is murder in the first or second degree; but if the defendant on arraignment confesses his guilt, the court must proceed to determine the degree of the crime, by the verdict of a jury, upon an examination of the testimony, and pass sentence accordingly."

Code of Alabama, 1975, §13-1-90 read as follows:

"Manslaughter by voluntarily depriving a human being of life is manslaughter in the first degree; and manslaughter committed under any other circumstances is manslaughter in the second degree.

Written request charges that the jury be permitted to consider lesser included homicide charges were denied by the trial court and the defense was instructed, over objection, that it could not argue to the trial jury to mistry the case even though the applicable statute permitted a jury to take that course of action.

A sentence of death was imposed.

The judgment was reversed by the Alabama Court of Criminal Appeals August 4, 1981 and remanded for a new trial. Application for Rehearing was overruled and a request for Certiorari was denied by the Alabama Supreme Court.

STATEMENT OF THE FACTS

Respondent adopts the Statement of Facts of the petitioner with the exception of the last paragraph. In lieu of that paragraph Respondent states that the statutory scheme of the Alabama death penalty law in existence at the time of this trial hindered and restricted the defenses available to him in violation of the Fourteenth Amendment of the Constitution of the United States.

ARGUMENT

THIS COURT'S DECISION IN BECK DOES MANDATE THE REVERSAL OF THIS CASE TRIED UNDER THE ALABAMA DEATH PENALTY STATUTE PRIOR THERETO

REASON FOR DENYING THE WRIT: THERE IS NO CONFLICT WITH BECK V. ALABAMA (447 U. S. 625 [1880])

Petitioner notes that the defense at trial relied upon the circumstantial nature of certain evidence against the Respondent and presented alibi testimony. There was little defense, other than insanity, that could have appropriately been argued under the statutory scheme of the Alabama death penalty law in force at that time. This results from the statutory prohibitions of the jury considering lesser included offenses. The applicable portion of §13-A-5-31(a) (10) Code of Alabama, 1975 "for ... murder in the first degree where two or more human beings are intentionally killed by the

defendant for one or a series of acts;..." [emphasis added].

There are many arguments that could have been made to a trial jury consistent with the prosecution evidence that one or more of these killings, even if done by the defendant, was homicide of a degree less than murder in the first degree as defined by the statute or, at least, one of the killings was unintentional. Arguments could have been advanced in addition to and as an alternate for the arguments relating to circumstantial evidence and alibi. Under those circumstances the trial jury could have returned a charge carrying a lesser but severe penalty. The jury would have had a third choice. Those arguments advanced on behalf of the Respondent under the existing statutory law of Alabama at the time of this trial would have left the trial jury only two choices: (a) conviction of

capital murder, or (b) an aquittal of a man deemed to have committed one or more very serious offenses, though less than capital murder. This is the very wrong addressed in Beck v. Alabama. The transcript demonstrated hot blood between one victim and the Respondent and an absolute lack of ill will between the other deceased and the Respondent. The circumstantial facts were arguably consistent with second degree murder or manslaughter in both cases. Alabama's then statute made the presentation of this defense not feasible and eliminated the jury's third choice.

This case is clearly distinguishable from Ritter v. Alabama (certiorari petition now pending) and Hooper v. Evans #80-1714 (certiorari granted June 20, 1981 and presently pending in this Court).

For reasons stated it is respectfully

submitted that this Petition for a Writ of Certiorari should be denied.

ORIGINAL SIGNED BY
BARRY HESS

BARRY HESS
Attorney for Respondent

CERTIFICATE OF SERVICE

I, Barry Hess, a member of the Supreme Court of the United States and Attorney for Earl A. Bryars, Jr., Respondent, do hereby certify that on this 1 day of April, 1982, I did serve the requiste number of copies of the foregoing on the Attorney for the Defendant, by mailing same to him, first class postage prepaid and addressed as follows:

Mr. Edward E. Carnes
Assistant Attorney General
Office of the Attorney General
250 Administrative Building
64 N. Union Street
Montgomery, Alabama 36130

ORIGINAL SIGNED BY
BARRY HESS

BARRY HESS

ADDRESS OF COUNSEL:
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